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ZONING BOARD OF APPEALS
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DRAFT MINUTES – REGULAR MEETING
May 10, 2012
COMMON COUNCIL CHAMBERS
7:00 PM

Present were Acting Chairman Herbert Krate, Michael Sibbitt, Joseph Hanna, Rodney S. Moore, Alt. Rick Roos.

Absent was Chairman Richard S. Jowdy.

Staff present were Sean P. Hearty, Zoning Enforcement Officer, Patricia Lee, Secretary. Acting Chairman Krate called the meeting to order at 7:04 pm with a five-person board. Krate explained the procedure for public hearing to the audience, and that four positive votes are required to pass a variance. Krate read the legal notice into the record. Motion to hear tonight's petitions made by Roos. Second by Hanna. Motion carried unanimously at 7:05 pm.

CONTINUATION OF PUBLIC HEARINGS: NA

NEW BUSINESS:

12-20 – Alfred H. Jennings, Sr., 30 E. Franklin St.(I13016), Sec.6.A.3., to reduce side yard setback from 20 ft. to 5 ft. for enlarged roof structure at fuel oil facility (IL-40 Zone). Krate read this into the record. Roos recused himself from the discussion and stepped down. You will require a unanimous vote, Krate said. Jeff Jennings introduced himself. Al Jennings, my father, is in the audience, he said. He explained his fuel oil terminal operation and the roof structure they are seeking the variance for. We have pumps and miscellaneous pipes, and we must seek this variance to comply with DEEP regulations, specifically regarding stormwater discharge. Krate asked are there any questions. Moore noted that the footprint of the roof is inside the footprint of the two existing buildings. Jeff Jennings explained to a gentleman in the audience the location of the roof structure. The applicant described the map to gentleman away from microphone. Krate asked is there any objection to the application? Being no objection, we will inform you of our decision. Sibbitt made a motion to close this public hearing. Hanna seconded the motion. Motion carried unanimously. Later in the voting session, Moore made a motion to approve, per plan submitted, to reduce side yard setback from 20 ft. to 5 ft. for an enlarged roof structure at the fuel oil facility, and Moore stated the hardship. Second by Hanna and Sibbitt. Motion carried unanimously at 8:01 pm.

12-21 – Belimo Air Controls (USA) Inc., Turner Road (A17001), Sec.6.A.3., to increase max. allowed height from 45 ft. to 53 ft. for a portion of new building (IL-40 Zone12.). Krate introduced this item at 7:10 pm, and Chris Donohue, Attorney at Law, came forward and placed the Concept Sketch on the easel. Krate explained that this is only for a height variance; anything else is not relevant to this application. Donohue introduced himself and his firm. First I will show you the schematic drawing, then the building. This is looking at

the building from the south. We are over the 45' anyway, and Donohue described the height changes on the Schematic Exterior Elevations. This rendering Concept Sketch, dated 5/7/12, Donohue explained that there is no relevance to the neighbors on this side. On the other side, on such a high elevation, plan proposed 2 rows of 7' white pines as planning commission asked for. Looking up, you run into the lower trees before seeing the upper pines. The issue of the height of the building did not seem to be an issue at the meeting today. I met with three members of the association, Donohue explained. They tried to leave the integrity of the land in place, like a Swiss chalet; they cannot dip in or cut down. Hanna asked what is the maximum height of the existing building now? Donohue replied I don't know. But we are knocking down the existing building. Donohue said 325 employees; they are talking, in answer to Krate. Krate asked is there anyone who wishes to speak for or in opposition to this variance request?

Monty Frank, from Cohen & Wolf, PC, Attorney for the Turner Hill Homeowners Association, Inc., a Ridgefield community, 73 homes, pool, near the road that accesses that property, a significant no. of children in this community. Based on tonight's presentation, there is no hardship as required by law. Krate: topography is a hardship. Frank said that is self-imposed. There currently exists a manufacturing facility that complies with zoning. They can build a larger facility and comply with the IL-40 zoning; they do not need a height variance. A variance can only be granted with a special difficulty. Financial is not relevant. Krate: we have not heard any financial hardship. They have not demonstrated any evidence that they cannot comply with zoning. It is still higher than is permitted by zoning. Any hardship is self-created by them, Frank said. The board does need to consider the impact on the surrounding neighborhood. Frank described the vicinity road, the children ride their bikes on that road, it leads to the pool. If it is granted, it would impact more traffic on the road, more trucks. Krate asked why would they access that facility off of Turner road. Hearty and Frank explained the access. Krate: I am asking you a simple question. How close are the members of the community to that facility? From the audience Thomas Lefebvre, a resident, came forward, saying I'm no engineer; it's about 100' feet from the access. Krate said I see it. There's a house right on the other side of that. An old broken road as well; what's going to happen with that? Secretary Lee asked Tom Lefebvre to sign in, which he did. Hanna said I have a question: if they put the same building at the same height, same no. of employees, the same number of cars going in there, the same size building, how will it improve their life. Krate: you can address the building, but he's asking about the traffic flow. KK: the height of the building does not impact the number of employees. Krate: there's no proof that 8' on that building will impact the quality of their lives. Atty and Krate disagreed. Moore elaborated that this is for a height variance, and described his understanding of the vicinity, the facility on the hill above the residences. Is there a tower? Something that would lower the property values; the health and safety of the community? Frank said you will see it from the road. Krate said let's say they dig into the ground to lower the height; you are still going to see that building. You are talking about 8' to voice an objection to the building project, Krate said. Frank said they have not shown what is required for a height variance. The zoning regulation was put in place to make that fit in with the neighborhood. Roos refuted citing the Ridgefield zoning regulations. Monty Frank said you may never have been challenged on them. The hardship has to be extraordinary. You have not heard that, Frank reiterated. Moore added, not larger; higher. It's not a bigger building, Krate said. Frank and Krate and Joseph Guidos from 21 McKeanan Place on Turner Hill discussed the issue. Guidos asked for a clarification of the dimensions, and had a question about how many employees. The applicant should clarify how many employees are there now, and how many are coming in, Guidos said. Krate and Guidos discussed the numbers stated on Monday night before Planning; the number you are giving. I asked the question about the number of employees because I was curious, Krate said. Monty Frank said we would respectfully disagree with that notion. Krate and Frank discussed the building size versus the taller size. Moore said I would like to

ask the applicant. Your point has been made and we understand your point, Krate said to Frank. Tom Lefebvre said when you drive up now, you do not see it. Krate said you're going to see this one. Lefebvre said I don't see that the existing building is not in compliance now; we don't see it. Anyone else who has something different to add, Krate asked. Donohue came back to the mic at Krate's request. I'm not certain if it is one or two stories; it is not three stories. Donohue explained the use of robotics. Krate asked were attempts made to excavate so that this building would be in compliance, and if so, and they weren't able to do that, I would like to see some engineering reports so stating. Donohue said it would not be impossible; it was for the surrounding neighborhood, and to stay with the current driveway; to set it up in this fashion; there are enormous switchbacks uphill. Krate and Donohue discussed the lay of the driveway, and where deliveries would be. Krate asked Hearty about the Planning hearing. They closed the hearing and are doing a resolution, Hearty said. EIC heard it last night and approved it. Zoning and Planning are reviewing it at the same time. Permitting has not come in to it yet, Hearty continued. Krate asked Donohue how would putting this off to the next meeting change things for you guys? Donohue explained. Krate said I would like to see their reports. I would like you to go back to your client and ask why they cannot lower the construction of the building into the ground at some point. I'm sure they've done that; probably done it for the Environmental Impact Commission; if there is any environmental impact in doing that. Krate said I'd like to hear this again on May 24th, and ask for that documentation before that May meeting. Paul Estefan, City of Danbury Airport Administrator, came forward, identified himself, and signed in. Estefan introduced himself regarding the airport; the airport does have zoning on the top of it. Buildings and structures and trees and poles do come across my desk, Estefan said. This building is just at the fringe of that runway; runway 8, according to the FAA review, but I don't foresee a problem with it. Any request for a height change has to go before the FAA and the Airport Administrator, which is why I am here tonight. Roos asked Estefan is there anything you need because of that height. Estefan said the FAA will talk directly to the applicant in that case. Having said that, we still have a say in it. When I go to the Town of Ridgefield, they tell me they don't have anything in their regulations about it, Estefan said. Frank said, just a couple of points about your questions to the applicant. What the applicant said tonight is they need the height in order to use robotics. That is not a hardship under the law. Krate: you are parsing that a little bit. The topography of the land is what forces him to go beyond the regulations; a pretty steep area. We can discuss all of this at the next meeting. Frank said my second point relates to that. The Planning and Zoning and EIC commissions' applications have been closed. Hearty said to Krate they are not going to approve the plans without the variance being granted. Krate and Frank discussed what they could build and the purpose of the Zoning Board of Appeals; the power of the board if this is a self-imposed hardship, versus the topography of the land, if this was a flat parcel would it work. Frank said recognize that there is an existing facility on this site. Hanna and Monty Frank and Krate disagreed on a few points. Krate said I want to get some more answers before this goes forward. Frank said you have to look at the impact on the surrounding neighborhood. Ann Blood, from 27 Barnum Place, signed in, stating we do not see the building now. There are Danbury residents there now, and she mentioned the Toll Brothers development. And to Krate, Blood said you are kind of scaring me now stating that it's eight feet higher. I know you're kind of fixated on Ridgefield and Danbury. I just wanted you to understand. Moore said I have a recommendation that I have not heard a particularly compelling argument from the applicant or the opposition for the variance. Roos said we did not determine the height of the existing building, did we? Donohue said no. Guidos had a question on the larger building, and it was discussed with Hanna and Krate. Krate said I don't know that, but that is not my concern right now. I want to be sure that they are asking for the minimum that is required, Krate said. We are not going to throw an employer of that magnitude out of the City of Danbury, Krate said. Guidos and Krate continued discussion on the height and

bringing that building into compliance. Guidos said are they talking about more than 8 feet. Regarding the impact on the character of the neighborhood, one thing to consider is that this sits on something that has already been raised. Moore added the distance above sea level is a concern for the airport also. This hearing will be continued to May 24, 2012, when we will pick up the hearing again, Krate said. Krate asked no questions? Moore made a motion to **continue** this to the 5/24/12 meeting. Is everyone clear on what we're looking for, Krate asked. Sibbitt seconded the motion. Motion carried unanimously at 7:58 pm.

REFERRAL:

12-22 - Neil Marcus, Esq., 114 Triangle Street, (K14120, J14268, K14119), variance to Section 4.B.2. in accordance with Section 11.B.2.(b) to grant a use variance to allow "metal recycling and scrap yard" in an RMF-4 Zoning District. Referral to the Planning Commission and to the Zoning Commission pursuant to Section 11.B.4.(a). Krate announced and read the # 12-22 variance request into the record verbatim.

ACCEPTANCE OF MINUTES: March 8, 2012 meeting minutes could not be voted on for acceptance with the five present commissioners. Motion to accept the April 12, 2012, minutes as complete by Hanna. Second by Roos. Motion carried unanimously.

THE NEXT REGULAR MEETING IS SCHEDULED FOR **May 24, 2012**, in Room **3C**.

ADJOURNMENT:

Motion to adjourn by Sibbitt. Second by Hanna. Motion carried unanimously at 8:02 pm.

Respectfully submitted,

Patricia Lee, Secretary